

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

MIDDLE EAST FORUM)	
1500 Walnut Street, Suite 1050)	
Philadelphia, PA 19102)	
)	
Plaintiff,)	
)	
v.)	Civil Action No.
)	
US DEPARTMENT OF)	
STATE)	
201 Center Street, NW)	
Washington, D.C. 20520)	
)	
Defendant.)	

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff MIDDLE EAST FORUM (“MEF”) for its complaint against Defendant US

DEPARTMENT OF STATE (“the Agency” or “State”), alleges as follows:

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, to compel production of records in response to a FOIA request to USAID submitted August 25, 2017.
2. State has improperly denied the request by failing to provide an initial determination in accordance with *Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013).
3. Plaintiff requested fee waivers for the request, as provided by FOIA, due to the public interest in the information the records address and, expressly in the alternative, the media and educational status of the requester.
4. Plaintiff expressly noted the search terms and probable locations of the records it was seeking as well as describing the significant public interest in these records.

4. State has not given plaintiff any estimate the volume of records responsive to the request, nor a date by which responsive records would be produced, nor has it responded to plaintiff's request for a fee waiver.
5. State therefore has failed to properly respond to plaintiff's request.
6. Accordingly, plaintiff files this lawsuit to compel the USAID to comply with the law and produce the properly described public records in these FOIA requests.

PARTIES

7. Plaintiff Middle East Forum ("MEF") has been an independent tax exempt 501(c) (3) nonprofit organization based in Philadelphia since 1994. MEF promotes American interests in the Middle East and protects Western values from Middle Eastern threats. The Forum sees the region - with its profusion of dictatorships, radical ideologies, existential conflicts, border disagreements, corruption, political violence, and weapons of mass destruction- as a major source of problems for the United States. Accordingly, MEF urges bold measures to protect Americans and their allies. In the Middle East MEF focuses on ways to defeat radical Islam; work for Palestinian acceptance of Israel; develop strategies to contain Iran; and deal with the great advances of anarchy. At home MEF emphasizes the dangers of Islamism; protects the freedoms of anti-Islamist authors, and publishers; and works to improve Middle East studies.
8. Defendant US Department of the State ("State") is a federal agency headquartered in Washington, DC.

JURISDICTION AND VENUE

10. This Court has jurisdiction pursuant to 5 U.S.C. § 552(a)(4)(B), because this is brought in the District of Columbia, and because the defendant maintains offices in the District of Columbia. Furthermore, jurisdiction is proper under 28 U.S.C. § 1331, because the resolution of disputes under FOIA presents a federal question.
11. Venue in this court is proper under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e) because FOIA grants the District Court of the District of Columbia jurisdiction, and because defendant is a federal agency.

FACTUAL BACKGROUND

12. On July 12, 2018 plaintiff submitted a FOIA requests to USAID, seeking memos communications and other documents concerning a grant given to World Vision Inc.
13. Plaintiff specified that the award ID was AID-OFDA-G-14-00023-001 and that the request sought information concerning the sub-grantee Islamic Relief Agency based in Khartoum, Sudan.
14. Plaintiff further explained that they specifically sought “*requester seeks any document, or series of documents, authorizing a one-time sub grant of \$125,000 to ISRA, believed by requesters to have been made in May of 2015, most likely by the Office of Threat Finance Countermeasures, or potentially others in the Bureau of Economic and Business Affairs.*”
15. Plaintiff provided a specific description of the documents assist the agency in locating records, and noted the types of records it was seeking, specifically “*relevant authorizing forms, memos, communications (including, but not limited to, emails, memos, meeting notes, letters, phone records, or similar materials),*” related to USAID grant AID-

OFDA-G-14-00023-001, and the subsequent OFAC license granted to World Vision to pay designated charity ISRA.

16. Plaintiff also noted that the documents being sought were most likely located in the Office of Threat Finance Countermeasures, or potentially other offices in the Bureau of Economic and Business Affairs.

Defendant's Reply and Subsequent Proceedings

17. On September 14, 2018, State sent plaintiff an acknowledgment letter via mail to the Middle East Forum's headquarters in Philadelphia, Pennsylvania rather than by electronic mail. This letter indicated that the State's Office of Information Programs and Services received the FOIA request on July 27, 2018. No reason was given for the unusual two-week delay in the appropriate office receiving the FOIA (which was sent from a post office inside Washington D.C. to State's offices in Washington D.C.), nor was there any reason given for the nearly two-month long delay in providing any kind of response, well outside the 20-day window allowed by the FOIA statute.
18. State's letter of September 14, 2018 also did not claim extraordinary circumstances as would have been allowed under statute to give State an additional 10 days to respond. But even if it had, the letter was well outside the then-allowable 30-days to respond.
19. State's letter September 14, 2018 claimed that State had adopted a "first in, first out," method of responding to requests. The letter did not give a determination, nor did it provide an estimated date by which a determination would be reached. The letter was signed by Eric F. Stein, Director of the Office of Information Programs and Services.

20. State's letter of September 14, 2018 failed to address any of the Middle East Forum's multiple requests for a fee-waiver as being in the public interest, or, alternatively, as being a media organization or, alternatively, as an educational institution.
21. State's letter of September 14, 2018 assigned the request number F-2018-05935 to plaintiff's request.
22. There has been no further attempts by State to contact the plaintiff or provide plaintiff with any substantive response to his request in the intervening months.
23. State has failed to provide a schedule of production, or otherwise comply with FOIA's requirements "within 20 working days of receiving the request, or within 30 working days in 'unusual circumstances.'" *Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013).
24. By failing to respond to plaintiff's request in the required time in violation of statutory deadlines, defendant has also waived any ability to now seek fees.
25. Plaintiff has constructively and actually exhausted the administrative process as regards this request, because of State's failure to abide by FOIA's statutory deadlines, or even to negotiate with plaintiff for a later date by which State might meet FOIA's requirements.

ARGUMENTS

24. Transparency in government is the subject of high-profile executive branch promises arguing forcefully against agencies failing to live up to their legal record-keeping and disclosure obligations.
25. Under the Freedom of Information Act, after an individual submits a request, an agency must determine within 20 working days after the receipt of any such request whether to

comply with such request, or 30 days under “unusual circumstances,” which State has claimed 5 U.S.C.S. § 552(a)(6)(A)(i) & § 552 (a)(6)(B)(i). Under *Citizens for Responsible Ethics in Washington v. Federal Election Commission*, 711 F.3d 180, 186 (D.C. Cir. 2013), that response must provide particularized assurance of the scope of potentially responsive records, including the scope of the records it plans to produce and the scope of documents that it plans to withhold under any FOIA exemptions. This 20-working- day time limit also applies to any appeal. § 552(a) (6)(A)(ii).

26. U.S. Code 5 U.S.C.S. § 552(a)(6)(A) proclaims that the 20-day (or 30-day under “unusual circumstances”) time limit shall not be tolled by the agency except in two narrow scenarios: The agency may make one request to the requester for information and toll the 20-day (or 30-day) period while it is awaiting such information that it has reasonably requested from the requester, § 552(a)(6)(A)(ii)(I), and agencies may also toll the statutory time limit if necessary to clarify with the requester issues regarding fee assessment. § 552(a)(6)(A)(ii)(II). Neither situation presents itself in this case.

27. In *Bensman v. National Park Service*, 806 F. Supp. 2d 31 (D.D.C. 2011) this Court noted: “[The effect of] the 2007 Amendments was to impose consequences on agencies that do not act in good faith or otherwise fail to comport with FOIA’s requirements. See S. Rep. No. 110-59. To underscore Congress’s belief in the importance of the statutory time limit, the 2007 Amendments declare that ‘[a]n agency shall not assess search fees... if the agency fails to comply with *any time limit*’ of FOIA” (*emphasis added*).

28. Defendant State owes plaintiffs records responsive to the requests at issue in this suit, which request reasonably described the information sought and was otherwise filed in

compliance with applicable law, subject to legitimate withholdings, and has failed to provide responsive records or any substantive response in violation of statutory deadlines.

29. Further, plaintiff notes that defendant has waived fees and/or waived its ability to assess fees under § 552(a)(4)(A)(viii) by failing to substantively respond to plaintiffs within the statutory deadline(s). State, therefore, has waived all fees and must produce the requested documents as required by law.

FIRST CLAIM FOR RELIEF Seeking Declaratory Judgment

28. Plaintiff re-alleges paragraphs 1-29 as if fully set out herein.
29. Plaintiff has sought and been denied production of responsive records reflecting the conduct of official business, because defendant has failed to substantively respond pursuant to *Citizens for Responsibility & Ethics in Washington v. FEC*, 711 F.3d 180 (D.C. Cir. 2013).
30. Plaintiff asks this Court to enter a judgment declaring that:
- A. State records as specifically described in FOIA request F-2018-05935 is subject to release under FOIA;
 - B. State must release those requested records or segregable portions thereof subject to legitimate exemptions;
 - C. State may not assess or seek costs and fees for the request at issue in this case, as plaintiffs are entitled to a waiver of their fees.

SECOND CLAIM FOR RELIEF Seeking Declaratory Judgment

31. Plaintiff re-alleges paragraphs 1-33 as if fully set out herein.

32. Plaintiff is entitled to injunctive relief compelling defendant to produce all records in its possession responsive to plaintiff's FOIA requests, without fees, subject to legitimate withholdings.
33. Plaintiff asks the Court to order the defendant to produce to plaintiffs, within 30 business days of the date of the order, the requested records described in plaintiffs' FOIA request, subject to legitimate withholdings.
34. Plaintiff asks the Court to order the Parties to consult regarding withheld documents and to file a status report to the Court within 30 days after plaintiffs receives the last of the produced documents, addressing defendant's preparation of a *Vaughn* log and a briefing schedule for resolution of remaining issues associated with plaintiffs' challenges to defendant's withholdings and any other remaining issues.

THIRD CLAIM FOR RELIEF Seeking Costs and Fees

35. Plaintiff re-alleges paragraphs 1-34 as if fully set out herein.
36. Pursuant to 5 U.S.C. § 552(a)(4)(E), the Court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.
37. Plaintiff is statutorily entitled to recover fees and costs incurred as a result of defendant's refusal to fulfill the FOIA request at issue in this case.
38. Plaintiff asks the Court to order the defendant to pay reasonable attorney fees and other litigation costs reasonably incurred in this case.

WHEREFORE, Plaintiff request the declaratory and injunctive relief herein sought, and an award for their attorney fees and costs and such other and further relief as the Court shall deem proper.

Respectfully submitted this 2nd day of January, 2019.

By Counsel:

A handwritten signature in cursive script, appearing to read "Cliff Smith".

Clifford V. Smith
Washington Project Director - Middle East Forum
csmith@meforum.org, (202) 730-9793
Maryland State Bar # 201106150244